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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-703

SHOWKAT HAY and VICTOR HAY,

Petitioners,

versus

CHARLES HOLLIS, JOSEPH HOLLIS, CLARENCE PIERCE MONROE and TRUCKAWAY CORPORATION,

Respondents.

BRIEF OF RESPONDENTS CLARENCE PIERCE MONROE AND TRUCKAWAY CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ON NOT PRINTED
PONSE NOT PRINTED
RESPONDENT HOLLIS)

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Respondents CLARENCE PIERCE MONROE and TRUCKAWAY CORPORATION respectfully respond to petitioners' petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

STATEMENT OF FACTS RELEVANT TO ISSUES ON PETITION FOR WRIT OF CERTIORARI

These defendants, Clarence Pierce Monroe and Truckaway Corporation, can agree with the appellants only with respect to those matters which are set forth

in the record of this case. For the most part, the statements made by appellants are matters outside of the record of the case and are matters purely between the appellants and their attorneys.

The record clearly shows that after five days of trial, petitioner Showkat Hay received a jury verdict in the amount of $10,000 against the defendant Charles Hollis. Petitioner Victor Hay as Administrator of the Estate of Jeannette Hay, received a jury verdict in the full amount of special damages asked in his complaint against defendant Charles Hollis. The jury did not return a verdict against defendants Clarence Pierce Monroe and Truckaway Corporation, but on the contrary returned a verdict for Truckaway Corporation against defendant Charles Hollis on Truckaway Corporation's cross-complaint for $600, which was the exact amount Truckaway Corporation had demanded in its cross-complaint against defendant Charles Hollis. Copy of that judgment is attached hereto and referred to as Respondent Truckaway Corporation's Exhibit "A".

For further clarification of the questions involved and raised by the petitioners, we attach hereto as Exhibit "B" and make a part hereof an Order signed by Judge W. A. Bootle entitled "Background".

QUESTIONS INVOLVED

1. The jury verdicts rendered in favor of appellants as set forth and shown by the judgments of the Court. Petitioners' Exhibits "C" and "D" clearly answer this question.

2. The trial of the case lasted five days. Ample opportunity existed for appellants to have made some protest to the Court, if in truth they had a protest to make as to their attorneys, who earnestly and vigorously prosecuted the case in behalf of appellants. Throughout the trial appellants sat at counsel table with their attorneys, Mr. Cadenhead and Mr. Friedlander, and cooperated and advised with them throughout the trial. Their attorney, Mr. Cadenhead, at the time of the trial of the case was President of the Atlanta Bar.

Whatever dispute the appellants now have with their attorneys was not reflected in the trial of the case and is a matter which has appeared only months after the trial was over.

3. To refer to the trial as being a "mock trial" is an affront to the judicial system. Judge W. A. Bootle, the presiding Judge, is a competent and experienced judicial officer whose competence, fairness and ability are well known to this Court.

"MAJOR QUESTIONS AND ISSUES UNANSWERED"

1. A hearing on the motion for summary judgment on behalf of defendant Joseph Hollis was heard before the Court and on the twenty-second day of December, 1969, Joseph Hollis was dismissed as a defendant. No appeal was taken to the order of the Court dismissing Joseph Hollis. The case proceeded to trial on May 11, 1971. No evidence was ever presented to show that the

automobile driven by Charles Hollis came within the purview of the family car doctrine of the State of Georgia.

2. Prior to and during the trial of the case the log kept by Clarence Pierce Monroe was made available to all counsel.

3. The fact that Phyllis Posner Freyer was pregnant at the time of the collision was stated in her attorney's opening statement and Phyllis Posner Freyer testified in the trial as a strong witness in favor of the plaintiffs.

4. Under Rule 42(a) of the Federal Civil Practice Act, Judge W. A. Bootle, the trial Judge, within his discretion consolidated the actions which involved a common question of law and fact. No objection to the consolidation was raised by any party to the action.

RESPONSE OF CLARENCE PIERCE MONROE AND TRUCKAWAY CORPORATION TO "USE OF THE WORD FOREIGN"

Counsel is unable to recall use of the word "foreign" anywhere in the trial of this case as claimed by petitioners. The record prepared at petitioners' request contains the exact language of the trial Judge as follows:

> "I assume, members of the jury, that the fact that some of these plaintiffs are non-residents of the State of Georgia would have nothing to do with, no effect at all upon your consideration of that person's claim one way or the

other, and that you would give the same careful consideration to the claim of a non-resident as you would the claim of a resident. If I am incorrect in that, please rise." (T-3.)

There is no error in the use of this language.

REASONS FOR NOT GRANTING THE WRIT

Appellants have had a fair and complete trial of their cause before a competent Judge and jury and were represented in the trial of their cause by competent counsel. The verdict returned by a fair and impartial jury in the amount of $10,000 for Mrs. Showkat Hay for the death of Jeannette Hay, and the verdict in the amount of $2,015.76 to Victor Hay, Administrator of the Estate of Jeannette Hay, in the amount of special damages asked, clearly shows that there is no error.

Respectfully submitted,

CUBBEDGE SNOW
Attorney for Respondents
Clarence Pierce Monroe and
Truckaway Corporation

CERTIFICATE OF SERVICE

I, Cubbedge Snow, of counsel for Respondents, Clarence Pierce Monroe and Truckaway Corporation, do hereby certify that I have this day served copies of the foregoing brief of Respondents in opposition to Petition for Writ of Certiorari upon the following parties, at the addresses shown, under cover of sufficient postage to insure first class delivery: Jones, Cork, Miller & Benton, 500 First National Bank Bldg., Macon, Georgia 31201; Frank Smith, Esquire, 1425 H Street, N.W., Washington, D.C. 20005; Nall, Miller & Cadenhead, 100 Peachtree Street, N.W., Atlanta, Georgia 30303; Johnson, Harper, Daniel & Ward, 1526 Fulton National Bldg., Atlanta, Georgia 30303; Victor Hay, 8228 New Hampshire Avenue, Silver Spring Maryland 20903.

This _____ day of December, 1972.

_____

CUBBEDGE SNOW

EXHIBIT "A"

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF GEORGIA,
MACON DIVISION

IN RE CROSS CLAIMS OF:
TRUCKAWAY CORPORATION

vs. Civil Action File
No. S: 2453 & 2563

CHARLES HOLLIS

JUDGMENT

This action came on for trial before the Court and a jury, Honorable W. A. Bootle, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that the Plaintiff in the above-captioned Cross Claims, Truckaway Corporation, recover of the Defendant in the above-captioned Cross Claims, Charles Hollis, the sum of Six Hundred ($600.00) Dollars, with interest thereon at the rate as provided by law, and its costs of this action.

Dated at Macon, Georgia, this 17th day of May, 1971.

JOHN P. COWART
Clerk of Court

/s/ DOROTHY F. MOTES
Dorothy F. Motes
Deputy U. S. Clerk

[Filed: May 18, 1971]

EXHIBIT "B"

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

MRS. SHOWKAT HAY, Individually, and VICTOR HAY, as Administrator of the Estate of JEANNETTE HAY,

Plaintiff,

versus CIVIL ACTION NO. 2453

CHARLES HOLLIS, CLARENCE PIERCE MONROE and TRUCKAWAY CORPORATION,

Defendants.

BACKGROUND

A tractor-trailer being operated in a southerly direction owned by Truckaway Corporation and driven by Clarence Pierce Monroe, and a Ford Fairlane being operated in a northerly direction by its driver-owner, Mr. Charles Hollis, collided somewhere near the center of the roadway, the Hollis vehicle then proceeding further northward and colliding with a Mustang automobile driven by Jeannette Hay, daughter of Mrs. Showkat Hay and Victor Hay and in which Phyllis Posner was riding as a passenger. That collision, or those collisions, gave rise to the pending litigation, Miss Jeannette Hay having died as a result of injuries sustained in the collisions and Miss Phyllis Posner having sustained injuries therein. In one complaint Mrs. Showkat Hay sought damages against Charles Hollis, Clarence

Pierce Monroe and Truckaway Corporation in the amount of $250,000.00, the alleged full value of her daughter's life, and Victor Hay, as Administrator of the Estate of his deceased daughter, sought against the same defendants $2,015.76 as damages for funeral and burial expenses and $10,000.00 as pain and suffering. Miss Posner, who, at the time of suit, was Mrs. Phyllis Posner Freyer, sued the same defendants for $225,000.00 for personal injuries (Civil Action No. 2563). There were certain cross-claims not necessary here to mention.

The two cases were consolidated for trial and were tried before a jury in a hotly contested trial on May 11, 12, 13, 14 and 17, 1971. A crucial question was whose negligence caused the initial impact between the tractor-trailer and the Hollis Fairlane. If the driver of the tractor-trailer was negligent to any extent with reference to the initial impact then Truckaway Corporation could be found liable by the jury for the resulting impact between the Hollis Fairlane and the Mustang containing Miss Jeannette Hay and Phyllis Posner Freyer. On the other hand, if Truckaway's driver of the tractor-trailer was not at all negligent with respect to the initial collision then such driver and Truckaway Corporation could not be held liable for the later impact between the Fairlane and the Mustang. The jury, on this purely factual issue, decided in favor of Truckaway Corporation and its driver Clarence Pierce Monroe. At the hands of the jury Mrs. Hay recovered $10,000.00 against the defendant Charles Hollis, but nothing against Clarence Pierce Monroe and Truckaway Corporation. Victor Hay, as Administrator, recovered

against Charles Hollis the sum of $2015.76 claimed by him as burial and funeral expenses, but recovered nothing for pain and suffering, and recovered nothing from Clarence Pierce Monroe and Truckaway Corporation either for burial and funeral expenses or pain and suffering.

Phyllis Posner Freyer recovered $30,000.00 against Charles Hollis and nothing against Clarence Pierce Monroe or Truckaway Corporation; and on a cross-claim Truckaway Corporation recovered against Charles Hollis the sum of $600.00 representing damages to Truckaway's vehicle.

The verdicts were returned on May 17, 1971.

PENDING MOTION

The plaintiffs, Mrs. Showkat Hay and Victor Hay, filed their notice of appeal on June 14, 1971. Obviously, there was much delay in ordering or obtaining a transcript of the trial evidence because said plaintiffs forwarded to the Clerk of this Court on March 21, 1972 a letter as follows:

> "With reference to the letter of March 13, 1972 from Mr. Joseph A. Gowan and by direction of the U. S. Court of Appeals, I am enclosing for the favorable consideration of your Honorable Court my application for leave to appeal in forma pauperis.
>
> (Signed) Showkat Hay."

The enclosure with said letter was an "Affidavit of Financial Status" on CJA Form 3a, and gave certain financial information regarding Mrs. Hay and reciting "my husband is presently unemployed."

Under date of March 28, 1972, this Court entered its "memorandum to Mrs. Showkat Hay, Mr. Victor Hay, and to Counsel", enclosing to Mr. and Mrs. Hay copies of Rule 24, Rules of Appellate Procedure and Form 4 of said Rules ordering that if they desired to make application to this Court to appeal in forma pauperis they must file an affidavit setting forth "the issues which . . . [they] intend(s) to present on appeal" with sufficient particularity so that this court could determine whether the proposed appeals have merit or are frivolous, calling attention to Code Section 28-1915 reciting that "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." Said memorandum ordered that the affidavits should disclose how and why the application is being made so belatedly and that the affidavits disclose, all of the financial data called for by Rule 24 and Form 4, and requested affidavits from both Mrs. and Mr. Hay and from Mr. Hay with respect to the financial condition of the estate.

Under date of April 6, 1972, Mrs. Hay filed her response to said Memorandum stating, in part, as follows:

> "It is the contention of plaintiff Showkat Hay that that sufficient particularity of the issues has so been stated in her motion of July 14, 1971,

> declaring specifically that she was not faithfully represented by counsel before and at the trial from May 11 to May 17, 1971, at the U. S. District Court, Macon, Georgia."

She has stated no other issue or issues which she intends to present on appeal.

Also, on April 6, 1972, Mr. Victor Hay filed his response to said Memorandum, stating, in part:

> "One of the reasons for his appeal is that he was not faithfully represented by counsel at the trial in the U.S. District Court, Macon, Ga. from May 11 to May 17, 1971."

He has stated no other issue which he, as Administrator, intends to present on appeal.

Obviously, neither appellant has stated any valid grounds of appeal, and, accordingly, this court hereby certifies, in writing, that said proposed appeals are frivolous and are not taken in good faith.

The undersigned presided at said trial and was surprised to learn sometime after the trial had concluded that there was apparently some dissatisfaction on the part of said two plaintiffs with the services rendered by their counsel, and was even more surprised to see in a pleadings filed in this court by Mr. and Mrs. Hay on July 16, 1971, the statement: "Movant (their former counsel) in feigning to represent the case for the plaintiffs has dealt in all manner of deception

and delay. Movant did not represent faithfully the plaintiffs before and at the trial from May 11 to May 17, 1971 at the U. S. District Court, Macon, Ga." This Court must in fairness and frankness state that he saw nothing during the entire litigation to indicate anything other than diligent and able preparation and representation on the part of counsel for Mr. and Mrs. Hay.

Additionally, the responses filed by Mr. and Mrs. Hay to this Counsel's Memorandum and filed presumably as their applications for authority to appeal in forma pauperis fail to give much of the detailed information required by Form 4; for instance, the date of last employment and wages per month, sums received within the past twelve months, and that because of poverty they are unable to "give security" for costs, and, on the contrary, Mrs. Hay's response states that the reason for the belated application "is that she had then an income and savings, and she has no income and savings now."

Accordingly, said applications for leave to appeal in forma pauperis are hereby denied.

SO ORDERED this 21st day of April, 1972.

/s/ W. A. BOOTLE
SENIOR UNITED STATES JUDGE

[Filed: Apr. 21, 1972]